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STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL
BOARD SAN DIEGO REGION

Regional Water Quality Control Board
9174 Sky Park Court, Suite 100
San Diego, California
Wednesday, March 13, 2002

JOINT PUBLIC HEARING
ITEM 7

(Reporter's Transcript of Proceedings)

JOINT PUBLIC HEARING: NPDES Permit Renewal, City of San Diego, E.W. Blom Point Loma Wastewater Treatment Plant and Ocean Outfall. The San Diego Regional Water Quality Control Board and the U.S. Environmental Protection Agency will convene a joint public hearing to obtain information from the public and interested parties on Tentative Order No. R9-2002-0025. (Tentative Order No. R9-2002-0025, Draft NPDES Permit No. CA0107409)

REPORTED BY: PARK AVENUE DEPOSITION SERVICE
GRACE A. VERHOEVEN (800) 447-3376
CSR NO. 11419

1 STATE OF CALIFORNIA
2 REGIONAL WATER QUALITY CONTROL BOARD
3 SAN DIEGO REGION
4
5 9174 Sky Park Court, Suite 100
6 San Diego, California 92123
7 Information: (858) 467-2952
8 CALNETs: (8) 734-2952

9

10 APPEARANCES

11 BOARD MEMBERS:
12 JOHN MINAN, CHAIRMAN - Water Quality
13 GARY STEPHANY, Vice Chair - Undesignated (Public)
14 LAURIE BLACK - Water Quality
15 JANET KELLER - Recreation/Wildlife
16 TERESE GHIO - Industrial Water Use
17 RICHARD WRIGHT - County Government
18 VICKIE BUTCHER - Water Supply
19 ERIC ANDERSON - Irrigated Agriculture

20 EXECUTIVE STAFF:
21 JOHN H. ROBERTUS, Executive Officer
22 LORI COSTA, Executive Assistant

23 STATE BOARD STAFF COUNSEL:
24 JORGE LEON

25 WATERSHED BRANCH
MICHAEL McCANN, Supervising Engineer

ALSO PRESENT:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
ALEXIS STRAUSS, Director, Water Division

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1 SAN DIEGO, CALIFORNIA; WEDNESDAY, MARCH 13, 2002

2 9:45 A.M.

3

4 ITEM 7

5 CHAIRMAN MINAN: This brings us to Agenda Item 7,
6 which is a joint hearing by the Regional Board with the
7 representatives from the Federal EPA. This is not an
8 action item. This is an item for the receipt of
9 information, oral and written. I would remind participants
10 today that the notice indicates that written testimony is
11 to be submitted by the close of business today.

12 And I would just at this point like to
13 indicate that the context of this hearing is based on the
14 Clean Water Act requirement that publicly-owned treatment
15 works that are discharging to the ocean comply with
16 secondary treatment standards. Those standards are defined
17 in the Code of Federal Regulations.

18 There is an opportunity for an applicant
19 discharger to apply for a waiver from those standards.
20 The waiver proceeds under Section 301(h) of the Federal
21 Clean Water Act. The USEPA has exclusive jurisdiction over
22 the issuance of waivers. The state's interest in this
23 matter, of course, is that the waters of the state may be
24 affected by those discharges. So that's the reason why we
25 are having a joint hearing with the Federal USEPA today.

1 Before introducing Alexis and allowing her
2 to make some procedural comments, I would also like to
3 indicate that the procedure that we will be following is
4 that the representatives of the staff from the USEPA will
5 be given the opportunity to begin the proceeding. It's my
6 understanding that they will take approximately 10 minutes.

7 That will be followed by the Regional Board
8 staff presentation, approximately 10 minutes. I understand
9 that the city will require approximately 20 minutes. And
10 the city's presentation will be begun by Mayor Murphy, who
11 we welcome at this time, followed by Councilman Scott
12 Peters. And then their staff will be given the opportunity
13 to make further comments and address the Board.

14 Following the city presentation will be the
15 opportunity for public comments. I would like to limit the
16 public comments to 4 to 5 minutes. To the extent that
17 there is organized presentations, I would ask that the
18 organized presentations be made. And I will permit some
19 additional time to be allocated to groups for organized
20 presentations.

21 Following the public comment period, there
22 will be the opportunity for the city to summarize its
23 position followed by Regional Board staff and EPA staff,
24 at which point we will close the hearing on this agenda
25 item. A decision is scheduled for April 10th which is at

1 our next meeting. As I understand it, representatives of
2 the Federal EPA will be available at that time as well as,
3 of course, our staff.

4 At this point -- Mr. Stephany, you had a
5 question?

6 MR. STEPHANY: Not a question, but at this time
7 before we get started, I feel like I need to make a
8 disclosure. Even though we're not voting today, eventually
9 we will be voting on the permit. Many years ago wearing a
10 different hat I actually testified on behalf of the city
11 against the EPA when the EPA was suing the city.

12 This was prior to a waiver. So I have
13 testified against EPA on the waiver process at some point
14 in time. I don't feel it will make any difference in my
15 voting now. This was probably 10 years ago.

16 AUDIENCE MEMBER: It was 1991, sir.

17 MR. STEPHANY: Anyway, I just felt like I needed to
18 make a disclosure at this point in time so that it doesn't
19 come up later on.

20 CHAIRMAN MINAN: I appreciate your candidness in
21 this matter. I will at this point swear all people who
22 will be giving testimony today because this is a factual
23 presentation. So if I could ask those of you who are
24 prepared to give testimony on this agenda item to stand and
25 raise your right hand.

1 Do you swear that the testimony that you are
2 providing the Board today and the EPA is truthful, the
3 whole truth of the matter, and nothing but the truth under
4 penalty of law? If you do, indicate "I do."

5 STANDING AUDIENCE: I do.

6 CHAIRMAN MINAN: Thank you. At this point, I would
7 like to give my colleague from the USEPA the opportunity to
8 make whatever procedural comments she would like to make.

9

10 ALEXIS STRAUSS,

11 MS. STRAUSS: Good morning, I'm Alexis Strauss.
12 I am Director of the EPA's Water Division. Our office is
13 in San Francisco. And I am joined here today by three
14 colleagues: our attorney, Bob Moyer; staff person, Terry
15 Fleming, beside him; and our manager, Janet Hashimoto.

16 This public hearing regarding the City of
17 San Diego's Federal National Pollutant Discharge
18 Elimination System Permit -- which from now on we can refer
19 to as NPDES -- and state Waste Discharge Requirements is
20 now open.

21 This hearing, as Chairman Minan had stated,
22 is being held jointly by the U.S. Environmental Protection
23 Agency and by the California Regional Water Quality Control
24 Board to receive your comment on these jointly-proposed
25 actions.

1 I've been authorized by our regional
2 administrator, Wayne Nastri, to serve as the presiding
3 officer for today's hearing. At EPA I serve as the Water
4 Division director.

5 This hearing is being held pursuant to state
6 law and under Part 6, Part 25, and Part 124 of the Code of
7 Federal Regulations. The purpose of this hearing, of
8 course, is to accept public comments on a draft Federal
9 NPDES Permit and on the state's Waste Discharge
10 Requirements, or WDRs, which incorporate EPA's tentative
11 decision to grant a variance from secondary treatment under
12 Section 301(h) of the Clean Water Act to the City of
13 San Diego for the Point Loma Ocean Outfall.

14 As you most likely know, treated municipal
15 wastewater is discharged into the Pacific Ocean through the
16 Point Loma Ocean Outfall beyond the 3-mile state waters
17 limit to federal waters. Therefore, we at EPA have a
18 primary regulatory responsibility for this discharge.

19 In 1984 a Memorandum of Understanding was
20 signed between the EPA and the State of California to
21 jointly issue and administer discharges that are granted
22 variances from secondary treatment requirements, which are
23 commonly called the 301(h) variances. Under California's
24 Porter-Cologne Water Quality Control Act, the California
25 Regional Water Quality Control Board issues the Waste

1 Discharge Requirements or WDRs.

2 Public notice of our tentative decision to
3 grant the applicant a 301(h) variance and the EPA and the
4 Regional Water Quality Control Board's joint proposal to
5 issue a draft 301(h) modified NPDES permit incorporating
6 federal requirements and state Waste Discharge Requirements
7 and public notice of this hearing were given on
8 February 11th of this year by publication in the San Diego
9 Union Tribune.

10 Copies of this public notice were mailed to
11 people on the Regional Board's general mailing list and on
12 EPA's 301(h) mailing list. This notice provided that
13 public comments on the draft permit incorporating the
14 301(h) tentative decision would be accepted through the
15 close of this public hearing today.

16 If you will make comment at today's hearing,
17 please fill out the speaker request card, as you may
18 already have done, and pass it to Ms. Costa or Mr. Coe.
19 And these cards will be provided to Chairman Minan who will
20 call your name.

21 You may also today submit written comments
22 for the administrative record. Please submit them to
23 Robyn Stuber of the USEPA or David Hanson of the Regional
24 Board staff here in San Diego. Written comments need to be
25 submitted to us by today. You may already have done so.

1 And if so, it's not necessary for you to repeat those
2 comments. Both written and oral communications receive
3 equal consideration from all of us.

4 After the close of the hearing and comment
5 period, EPA and the Regional Board will review and respond
6 to all written comments and to all oral comments received
7 today. We at the EPA and the Regional Board will not make
8 a decision on the proposed draft permit until all comments
9 submitted during the comment period have been considered.

10 The purpose of this hearing is to hear your
11 comments. We will not be engaging in a dialogue on the
12 merits of the issues themselves today, and those of us here
13 cannot commit to whether EPA or the Regional Board, to any
14 specific decision on the draft 301(h) modified permit.
15 Rather, it's our shared purpose to use this time to hear
16 and consider your comments.

17 EPA and the Regional Board may decide to,
18 one, issue the permit, issue the draft permit as the final
19 permit; or, two, modify the draft permit; or, three, deny
20 the permit application. Also, as part of this process we
21 at EPA will either, one, issue a final 301(h) decision; or,
22 two, deny the applicant's request for a 301(h) variance.

23 Each person from whom we receive written
24 comments will be given notice of the EPA and Regional Board
25 decision. If you haven't submitted written comments but

1 you'd like to receive notice of our decision, please add
2 your name to the attendance list for today's meeting in the
3 back.

4 After a final permit may be issued, a
5 petition may be filed with the EPA and the Environmental
6 Appeals Board to review any condition of the permit
7 decision. Only persons who file written comments on the
8 draft permit or who make oral comments at this hearing may
9 file a petition. Otherwise, any such petition for
10 administrative review may be filed only to the extent of
11 the changes from the draft to the final permit decision.

12 Petitions to the Environmental Appeals Board
13 must be filed within 33 days following receipt of the final
14 permit decision and must meet the requirements of Title 40,
15 Section 124.19 of the Code of Federal Regulations.

16 A copy of the transcript of today's hearing
17 is available for your inspection and copying at either
18 EPA's office in San Francisco -- which may not be
19 convenient -- or at this Regional Board office. Anyone who
20 wishes to purchase a copy of the transcript should please
21 make arrangements directly with our stenographer following
22 the hearing.

23 This concludes what I wish to say as the
24 hearing officer for the USEPA. We appreciate the level of
25 interest that you've shown and look forward to your

1 comments. And with that, may I turn it back to you,
2 Chairman Minan. We have two brief staff presentations as
3 you noted.

4 CHAIRMAN MINAN: Thank you. At this point, I would
5 like to move towards the presentations. As I understand
6 it, EPA is prepared to give the first presentation.

7 MS. STRAUSS: This will be Terry Fleming.

8 CHAIRMAN MINAN: Mr. Fleming, if you would state
9 your name for the record and affiliation, please.

10

11 TERRY FLEMING,

12 MR. FLEMING: Sure. My name is Terry Fleming.
13 I am with USEPA in San Francisco. Good morning to all.
14 I was the staff person that was assigned to review the
15 city's 301(h) application and prepare the tentative
16 decision document.

17 The last time I spoke to the Board on the
18 city's application was about 5 years ago, a little over
19 5 years ago. At that time, the discharge out the pipe had
20 recently begun to discharge. And while we had 3 years of
21 predischARGE baseline data, we only had one year of actual
22 data to evaluate the impacts. What's changed since then is
23 now we have an additional 5 years of data to evaluate the
24 impacts.

25 And so what I'd like to do -- I don't have

1 time to show you all the analyses that we did, but what I'd
2 like to do is walk you through the process that led to our
3 tentative decision.

4 So the first slide is the 301(h) criteria.
5 And in its broadest terms, the 301(h) criteria are designed
6 to assure that the proposed variance will not affect water
7 quality, to protect aquatic resources and recreational
8 uses, to make sure that there are provisions to remove
9 toxics, and to make sure there's an adequate monitoring
10 program which we can use to assess compliance and assess
11 the impact of the discharge.

12 So what is the city requesting? The city is
13 requesting that the existing variance from secondary
14 treatment for the removal requirements for TSS, total
15 suspended solids, and BOD, biochemical oxygen demand, be
16 renewed.

17 Under secondary treatment, the removal
18 requirements are 85 percent for both TSS and BOD on a
19 30-day average. Under the draft permit, which is the same
20 as the current permit, the city is required to move
21 80 percent of their total suspended solids on a monthly
22 average, and 58 percent of their BOD on an annual average.

23 In practice, the city has been removing
24 about 86 percent of their TSS on a monthly basis, and about
25 60 percent of their BOD on a monthly average. Next slide.

1 I'd like to talk a little bit about BOD. As
2 you may have noticed in the previous overhead, the State of
3 California, the Ocean Plan, does not have a requirement for
4 BOD removal. Rather, we rely on the dissolved oxygen
5 standard that is in the California Ocean Plan which
6 basically requires that the dissolved oxygen concentration
7 to ambient waters not be depressed more than 10 percent as
8 a result of the discharge. So how do we evaluate that?
9 Next slide, please.

10 We basically look at the 10 years of data
11 that the city has been collecting at 19 stations, water
12 quality stations, where they've sampled for dissolved
13 oxygen at multiple depths. They do this on a monthly basis.
14 And simply put, our assessments show us that there is no
15 dissolved oxygen problem off the coast of San Diego.

16 We also do worst case assessments using
17 models to evaluate what might happen under extreme
18 conditions, and the worst case predictions are well within
19 the 10 percent threshold specified in the California Ocean
20 Plan.

21 Now, to deal with toxics, we evaluate toxics
22 against the permit limits that are in the permit that are
23 based on the water quality standards that are in the
24 California Ocean Plan. There are more than 80 toxicants
25 that are identified in the California Ocean Plan, and they

1 monitor those on a minimum of a monthly basis; the metals
2 on a weekly basis, the organics on a monthly basis.

3 And our assessment is that concentrations in
4 both influent and effluent have decreased dramatically over
5 the 30 years. The concentrations in the effluent are low
6 relative to the permit limits. And the concentrations in
7 the receiving water are meeting water quality standards.

8 If you could show the next slide just for a
9 second. And part of that reduction is really due to the
10 pretreatment requirements that the city has and the way
11 they deal with it. So this slide shows the reductions in
12 metals loadings to the city's system as a result of their
13 pretreatment program. Go back to the previous slide for a
14 second.

15 We don't stop monitoring just because they
16 are below. We have continuing monitoring in the permit for
17 influent and effluent to evaluate trends to see if things
18 are going higher or lower. And we have established some
19 performance-based effluent limits which act as triggers to
20 let us know when things are getting high or not. Next
21 slide, please.

22 In the receiving water, one of the first
23 things we look at is the sediments. We want to find out
24 whether or not concentrations in the sediments are
25 increasing, whether there's a buildup of contaminants in

1 the sediments around the outfall.

2 There are no numeric standards for toxics in
3 sediments right now. So what we end up doing is comparing
4 these things to threshold values that we find in the
5 literature, and we try to compare them to background
6 concentrations from the area. If you can show the next
7 slide.

8 The city has been collecting sediment
9 contaminants from around the outfall for the last 10
10 years -- 3 years prior to discharge and the last 7 years
11 since then -- at a grid of stations. And we use that to
12 sort of look for spatial and temporal trends which might
13 indicate that there's an outfall effect.

14 We also compare this to results from
15 regional surveys. The city has been collecting every year
16 samples from a number of stations selected randomly. We
17 use this to give us some perspective as to the
18 concentrations that are around the outfall. I don't expect
19 you to memorize these, but this gives you a broad view of
20 what we're doing. Can you go back to the toxics slide,
21 please.

22 So what does our assessment show? Our
23 assessment shows that there is some organic enrichment
24 around the outfall, stationed close to the outfall. But we
25 see very little evidence of contaminant buildup around the

1 outfall.

2 The contaminant concentrations are low
3 relative to the background concentrations, and the
4 concentrations are well below any sediment toxicity
5 thresholds that we see in the literature. Next slide,
6 please.

7 This is just a slide to show that the
8 biochemical oxygen demand concentrations in the sediments
9 are fairly low throughout. The numbers go from 200 to
10 about 400, which are the types of concentrations that we
11 see around the outfall. So we don't see any increase.

12 Also in the receiving water what we need to
13 do is sort of look at the effects on the benthic community.
14 Again, there is no numeric standard for benthic community
15 impacts. The Ocean Plan asks us to make sure there's no
16 degradation of benthic communities.

17 The way we assess this is we look at a
18 number of benthic indices. Some common ones are the
19 infaunal trophic index and the benthic response index. And
20 we also compare the results to those regional results that
21 you saw before. The monitoring is fairly similar. We have
22 23 fixed stations which are sampled on a quarterly basis,
23 and then the random samples which are sampled every year.

24 Our assessment is basically that we see a
25 pattern of higher abundance and higher species witnessed

1 near the outfall. But the values are within the range of
2 expectations that we see from other places. The benthic
3 indices that we use can pick up outfall patterns, but they
4 still indicate that there's a healthy community around the
5 outfall.

6 Let me just show the infaunal trophic index
7 results. What this slide shows is the stations along the
8 outfall depth gradient. E-14 is the station that is right
9 at the Y of the outfall, and then they extend outward on
10 either side left or right. The bars in the white are
11 essentially the predischage numbers, and the shaded bars
12 are the post-discharge numbers.

13 Numbers above 75 are pretty typical of a
14 healthy community. We see that there's some interannual
15 variability in the numbers. We see that maybe there's a
16 slight depression at E-14. But other than that, it looks
17 like we have a pretty healthy benthic community in and
18 around the outfall.

19 If you want to compare this to more
20 regional-type stuff -- you can show the next slide -- these
21 are the results from the regional surveys, about 160, 200
22 samples that were taken. And what I've done is boxed-in
23 the area that corresponds to the outfall depth. And,
24 again, the numbers are between 75 and 95 which are similar
25 to the numbers that we saw around the outfall. So that's

1 how we sort of lead to the conclusion that things are okay
2 around the outfall. Can I have the next slide.

3 Again, we have to interpret narrative
4 standards in the Ocean Plan. The way we do that is
5 comparisons of before and after, and comparisons of spatial
6 trends. The city's monitoring program, they have eight
7 stations that they monitor on a quarterly basis, and then
8 twice a year selected fish they analyze for toxic buildup
9 in the fish tissue.

10 Our assessments show us that there are no
11 temporal or spatial trends in the fish communities. We
12 don't see any spatial trends in toxic buildup in fish
13 tissue, or temporal trends for that matter. The fish
14 tissue concentrations that we do see are similar to
15 background concentrations and generally are low relative to
16 human health risk screening levels. Go to the next slide.
17 And this is just to show the stations that the city
18 samples quarterly.

19 The city has a fairly-extensive monitoring
20 program to look at bacterial impacts. They monitor the
21 area around the outfall. They monitor the area in the kelp
22 beds, and they also monitor the shoreline stations. If I
23 could just have the next slide, please.

24 This is the distribution of the samples.
25 Bacteria are measured in the offshore not for compliance

1 purposes, but to identify the location of the plume. The
2 California Ocean Plan criteria apply to the kelp beds and
3 the shoreline samples.

4 Our assessment indicates that the offshore
5 plume is generally trapped at depth. Our review of five
6 years' worth of data from the kelp bed stations shows that
7 the city is in 100 percent compliance with the Ocean Plan
8 standards for bacteria. And although we do see occasional
9 high values on the shoreline, there is very little evidence
10 to suggest that these exceedences are related to the
11 outfall. This is supported by physical oceanographic
12 modeling, by the kelp bed monitoring we see no hits, and
13 the fact that the kelp bed is in between the outfall and
14 the shoreline. The next slide, please.

15 As you can see, the city has a fairly
16 extensive monitoring program which generates a tremendous
17 amount of data that we can use to evaluate compliance and
18 assess impacts.

19 I hope that I've given you an appreciation
20 for the types of analyses that are in the tentative
21 decision document. Our analysis is based on the complete
22 10-year data set that indicates that all water quality
23 standards and beneficial uses are being protected.

24 Based on this analysis or these analyses,
25 EPA tentatively concluded that the proposed discharge meets

1 the 9 301(h) criteria, as well as other applicable
2 requirements, and that the renewal of the variance is
3 warranted.

4 So I want to thank you for your time and
5 consideration. I'd be happy to entertain any questions
6 from the Board if you have any, or I can turn it over to
7 David. Thank you.

8 CHAIRMAN MINAN: Any questions? Thank you,
9 Mr. Fleming. It's my understanding that, Mr. Robertus, you
10 will now call the staff person to make the Regional Board
11 presentation.

12 MR. ROBERTUS: Mr. Chair, at this time David Hanson
13 is prepared to make the staff presentation.

14

15 DAVID HANSON,

16 MR. HANSON: Mr. Chairman, members of the public,
17 my name is David Hanson; that's H-a-n-s-o-n. I am an
18 engineer for the Publicly-Owned Treatment Works Compliance
19 Unit.

20 In your agenda packets, you have the
21 following items. You have Tentative Order No. 2002-0025
22 and draft NPDES permit and the associated Monitoring and
23 Reporting Program. You have a fact sheet explaining the
24 basis for those permit requirements. You also have USEPA's
25 tentative decision document, a copy of the Ocean Pollution

1 Reduction Act, which I'll refer to as OPRA, a City of
2 San Diego Metropolitan Wastewater facility location map,
3 and you have comments that have been received, actually,
4 through this morning in three separate packages.

5 The purpose of my presentation is to outline
6 for you how the key state and federal requirements for
7 protection of water quality are implemented in the
8 tentative order and draft 301(h) modified NPDES permit to
9 assure that the applicant's discharge will continue to meet
10 all the criteria outlined by Terry Fleming.

11 The following limits for TSS and BOD are
12 specified in the Ocean Pollution Reduction Act. For TSS
13 the permit requires that monthly average concentration not
14 exceed 75 milligrams per liter, and that the mean monthly
15 percent removal not be less than 80 percent, and that the
16 annual mass emissions be less than 15,000 metric tons per
17 year for the first 4 years of the permit term, and not more
18 than 13,599 for the final year of the 5-year permit term.

19 The 80 percent removal requirement for TSS
20 is more stringent than the 75 percent requirement in the
21 California Ocean Plan. For BOD the permit requires that
22 the mean annual percent removal not be less than
23 58 percent. There are no concentration limits for BOD in
24 the permit.

25 Although there are no major changes to the

1 existing permit, there are minor changes which I'd like to
2 mention to you, and they include, first, recalculation of
3 the water quality-based effluent limits in accordance with
4 the recently-adopted 2001 California Ocean Plan. This
5 resulted in limits equal to or more stringent than those in
6 the existing permit.

7 Furthermore, we included findings that
8 described new facilities added to the Metro system since
9 adoption of the current order. And that includes the
10 North City Water Reclamation Plant, the South Bay Water
11 Reclamation Plant, and Metro Biosolids Center.

12 Minor changes to the tentative Monitoring
13 and Reporting Program include specified calculation method
14 for determining systemwide compliance with the TSS and BOD
15 removal rate requirements, and requirements that the city
16 participate in a regional remote sensing program to further
17 investigate the fate and transport of effluent from the
18 Point Loma and South Bay Ocean Outfalls, runoff and other
19 various coastal sources.

20 As a result of public comment and further
21 review of sources contributing to the Metro system, the
22 following additional changes to the permit and Monitoring
23 and Reporting Program are being considered. We're
24 considering adding findings and requirements to address
25 potential increases in pollutant loading resulting from

1 industrial and nonindustrial runoff diversion to the
2 sanitary sewer system.

3 We're also considering a short-term special
4 study for influent and effluent monitoring of pesticides
5 such as diazinon and chlorpyrifos -- which I should mention
6 the city already voluntarily monitors for -- and the
7 herbicide, clopyralid, which has recently been the subject
8 of public discussion due to its detection in recycled green
9 waste. Detailed permit language regarding these proposed
10 additional items will be presented to the Board in an
11 errata sheet at the April 10th 2002 hearing.

12 As mentioned earlier, you have been
13 provided copies of public comments received as of this
14 morning. USEPA and Regional Board staff will collect all
15 written and verbal comments received as of the close of
16 business today -- if that's when we're closing the comment
17 period -- and will prepare responses and make changes to
18 the permit as deemed appropriate. Copies of all comments
19 and Regional Board staff responses will be provided to you
20 prior to the April 10th 2002 hearing, along with any errata
21 sheets describing any proposed changes and/or corrections
22 to the draft permit, fact sheet, and Monitoring and
23 Reporting Program.

24 I would like to recommend at this time that
25 the public comment period be closed as of close of business

1 today for this item in order to give staff and the Board
2 adequate time to consider and respond to comments prior to
3 April 10th.

4 In closing, I'd like to express what a
5 pleasure it has been to work with USEPA staff, including
6 Janet Hashimoto, Terry Fleming, and Robyn Stuber. That
7 concludes my presentation. I am available for questions.

8 CHAIRMAN MINAN: Thank you, Mr. Hanson. The notice
9 that we published indicates that it will be closed as
10 you've suggested. Are there any questions of Mr. Hanson?
11 Thank you.

12 MR. ROBERTUS: Mr. Chair, excuse me. To clarify,
13 the notice says it is closed up to the end of the hearing.
14 So it's not the close of business, it will, in fact, be at
15 the close of this hearing that the public comment will be
16 closed.

17 CHAIRMAN MINAN: That is correct. The notice
18 indicates that written comments will be accepted up to the
19 end of the March 13, 2002 hearing. If we get into kind of
20 a constructional question as to whether it's the hearing
21 today or whether or not it's the close of the agenda item,
22 we can make this a serious legal question to make Mr. Leon
23 work for his supper.

24 MR. LEON: I'm sorry, I was asleep. I very much go
25 along with the interpretation Mr. Robertus has given which

1 is the close of the hearing. Otherwise, you might have
2 somebody come in at 4:55 P.M. this afternoon attempting to
3 submit further supplemental documents. So I would support
4 Mr. Robertus's interpretation.

5 CHAIRMAN MINAN: It's the close of the agenda item.

6 MR. LEON: The close of the hearing on this matter
7 today.

8 CHAIRMAN MINAN: Right. Thank you. At this time,
9 I would like to now give the city representatives the
10 opportunity to address the Board and EPA. And I'd like to
11 begin -- I guess I'll begin with you, Mr. Tulloch. I was
12 prepared to recognize Mayor Murphy, but...

13

14 SCOTT TULLOCH,

15 MR. TULLOCH: With your indulgence, sir, we had a
16 slightly different sequence than the one that you had noted
17 earlier. Good morning, Chairman Minan, Ms. Strauss,
18 members of the Board. I'm Scott Tulloch; that's
19 T-u-l-l-o-c-h. I'm the Director of the Metropolitan
20 Wastewater Department of the City of San Diego.

21 Also speaking for the City of San Diego
22 today are the Honorable Mayor Dick Murphy and Councilmember
23 Scott Peters. In addition, Alan Langworthy, deputy
24 director of our Environmental Monitoring and Technical
25 Services Division will be available to assist in answering

1 any questions you may have.

2 I would like to begin my remarks by
3 expressing the city's support for the EPA's tentative
4 decision to renew the modified NPDES permit for the
5 discharge through the Point Loma Ocean Outfall.

6 After a thorough review, the EPA's technical
7 staff and scientific consultants have determined that the
8 present treatment system complies with all state and
9 federal standards and is protective of the public health
10 and environment. Additionally, it meets the statutory
11 requirements of Section 301(h) of the Clean Water Act.

12 The draft permit that has been recommended
13 by the EPA and your staff contains modifications to only
14 two parameters: the total suspended solids removal and
15 biochemical oxygen demand removal requirements as
16 authorized by the Clean Water Act.

17 In the case of these two constituents, the
18 draft permit contains limits much more restrictive than are
19 typically found in a modified NPDES permit. The State of
20 California Ocean Plan contains total suspended solids
21 requirements and addresses the biochemical oxygen demand
22 issue through limitations on oxygen depletion in the
23 receiving water.

24 The Point Loma discharge is well within
25 complete compliance with these state standards. All other

1 parameters and permit conditions are either the same or
2 more stringent than a full secondary treatment permit.
3 Toxics control is achieved by means of industrial source
4 control and household hazardous waste programs.

5 Because of the modified permit, San Diego is
6 required to operate an enhanced toxics control program, and
7 by this means has demonstrated secondary equivalency with
8 regard to toxics.

9 The discharge has consistently achieved
10 100 percent compliance with all state and federal
11 requirements, and has had and will continue to have a
12 significantly-enhanced monitoring program to assure
13 compliance in the future. This facility, the Point Loma
14 Wastewater Treatment Plant, has won seven consecutive gold
15 awards from the Association of Metropolitan Sewerage
16 Agencies for this high level of compliance.

17 The combination of excellent toxics control,
18 chemically-assisted advanced primary treatment, a long,
19 deep ocean outfall, and an extensive monitoring program has
20 ensured that the Point Loma discharge complies with all
21 standards and protects the public health and environment.

22 In summary, the USEPA and Regional Water
23 Quality Control Board staff thoroughly reviewed the
24 Point Loma discharge and recommended a tentative decision
25 and a draft permit that confirms that there is no

1 significant impact on the ocean, and that the public health
2 and environment are protected. The city concurs with this
3 finding and agrees that the requirements of this permit
4 will ensure continued protection in the future.

5 I would now like to introduce the Mayor of
6 the City of San Diego, the Honorable Dick Murphy.

7 MR. STEPHANY: Scott, before you leave, could you
8 fill out a card for us. You didn't fill out a speaker
9 slip.

10 MR. TULLOCH: I'll certainly do that.

11

12 MAYOR DICK MURPHY,

13 MAYOR MURPHY: Good morning, I am San Diego Mayor
14 Dick Murphy. Good morning, Chairman Minan, Ms. Strauss,
15 and members of the Board. We had Scott go first because
16 his presentation was more exciting than mine.

17 There's two other preliminary comments, I
18 really think the city council should consider adopting your
19 procedure of swearing-in all of the witnesses before they
20 testify. That's a great idea.

21 And, finally, I just wanted to thank
22 Marco Gonzalez for endorsing the re-election of
23 Scott Peters and myself. I would only point out to
24 Marco that we raised sewer fees, not taxes. He must have
25 been listening to the Proposition E people.

1 First of all, let me thank you for the
2 opportunity to address you on this important matter of the
3 operating permit for the Point Loma Wastewater Treatment
4 Plant. I thank you for your diligence with which you have
5 addressed this matter. We appreciate the candor,
6 professionalism, and tremendous effort your staffs have
7 displayed in their review of volumes of technical data in
8 our permit application.

9 Now, I know all of you have kept copies of
10 my State of the City Address, made videos of it, and have
11 reviewed it. I would just remind you that I set 10 goals
12 for the City of San Diego, and goal No. 4 is to clean up
13 our beaches and bays. And it is unacceptable to this city
14 council, to me, and our city staff to continue to have
15 beaches and bays that are polluted year after year.

16 And in response to that problem,
17 Councilmember Scott Peters -- who is going to talk next --
18 and I formed the Clean Water Task Force with which you are
19 somewhat aware. The Clean Water Task Force includes
20 representatives from both the environmental and business
21 communities, regulators, water quality scientists, elected
22 officials.

23 The Clean Water Task Force is overseeing the
24 city's implementation of the Storm Water Permit adopted by
25 this board last year. We are charting a course to reduce

1 beach postings and closures 50 percent by the year 2004.
2 And we had a significant decrease in postings and closures
3 during 2001 due to such things, as Mr. Robertus referred
4 to, as finding a major polluter at an RV dump station that
5 we have been able to stop in Mission Bay.

6 In addition, the City of San Diego has
7 approved an annual sewer fee increase of 7 1/2 percent for
8 the next 4 years. And with that funding, the city is doing
9 at least three things. It is tripling the rate of
10 replacing deteriorated sewer lines from 20 to 60 miles per
11 year. We are televising and assessing the interior of
12 1,000 miles of aging sewer lines to prioritize replacement,
13 and we are cleaning the entire 3,000 miles of sewer lines
14 in the city.

15 Our goal is to reduce sewer spills by
16 25 percent by the year 2004, and we had a substantial
17 reduction just in 2001 of sewer spills. And while it was
18 34 percent, I would point out that the amount of rains had
19 some effect on that, and there are some variables that we
20 can't control. So I don't want to claim victory yet, but
21 we certainly made some progress.

22 So let me then turn to the modified permit
23 for the Point Loma Wastewater Treatment Plant. The
24 Environmental Protection Agency has reviewed years of
25 technical monitoring data to determine that our advanced

1 primary treatment achieves all state and federal water
2 quality standards. And to ensure that compliance is
3 maintained in the future, the city will continue to conduct
4 the rigorous ocean monitoring and scientific studies
5 necessary.

6 In light of those findings, I cannot
7 recommend that the region's taxpayers double their sewer
8 rate to fund a \$2 billion secondary treatment program that
9 does nothing more than meet water quality standards our
10 current system is already attaining.

11 I have instead directed that the city should
12 spend its limited resources to stop harmful storm water
13 runoff and sewer spills that are causing beach closures and
14 placing the public health in jeopardy. Such programs are
15 smarter investments in our health and in our environment.

16 So in summary, we agree that the assessment
17 by the USEPA, that the present treatment system has no
18 significant adverse impact on the ocean environment; two,
19 we also agree that the provisions of the draft modified
20 permit as proposed by staff will ensure that no negative
21 impacts will occur in the future; and, three, we strongly
22 urge that you approve the tentative decision and draft
23 permit recommended by staff.

24 The public expects clean water, the Clean
25 Water Act requires clean water, and the City of San Diego

1 will fulfill its obligations to both the public and the
2 law. Thank you very much.

3 CHAIRMAN MINAN: Thank you, Mayor Murphy. I'd just
4 like to make sure that Mayor Murphy's letter becomes part
5 of the record. You submitted a letter, we've got a copy?

6 MAYOR MURPHY: Yes. The ad lib about Marco Gonzalez
7 is not in there. Let me next introduce San Diego City
8 Councilmember Scott Peters who co-chairs the city's Clean
9 Water Task Force and is an expert on a lot of environmental
10 issues, Councilmember Peters.

11 MR. PETERS: Thank you. Good morning, Mr. Chairman
12 Minan, members of the Regional Board, and Ms. Strauss.

13 MR. STEPHANY: Excuse me, Scott. Before the mayor
14 leaves, can I make a comment to the mayor since he's
15 leaving?

16 MR. PETERS: Sure. He promised to listen to what I
17 said, and then we're taking off.

18 MR. STEPHANY: I'm sorry, your honor, but in past
19 meetings we have made some comments to Scott. I'm sure
20 they got back to you, but I'd like to make sure that you
21 have heard them.

22 We think what you're doing at the city, you,
23 Scott, and others, is very admirable compared to what was
24 going on in the past. However, we don't want you to feel
25 that -- because I also know that you have a lot of pressure

1 from a lot of different sources to spend money on different
2 things. When you talk about the 25 percent in the year
3 2004 creating better sewer lines and stuff, some of us on
4 the Board don't feel that that's ambitious enough. And so
5 when you look at it, it's going to take another 20 years to
6 get all your lines back in to where they're not going to
7 break.

8 I just want to make sure that you know that
9 this board is putting pressure on your staff, that don't
10 let that time line slip if you can at all avoid it. And I
11 know there's other roads and trash and everything else that
12 you have to worry about, but water is very important. You
13 stated it as your goal, and I realize that. But I just
14 want you to hear it from us that the time line is still
15 kind of slow.

16 MAYOR MURPHY: Two quick responses. First of all,
17 the actual sewer spill reduction in 2001 was 34 percent.
18 However, the sewer spill reductions that went to receiving
19 waters was essentially unchanged. So we're trying to
20 exceed the 25 percent. We're certainly not there yet.

21 Secondly, you promise not to complain about
22 any potholes in your neighborhood if we meet all these
23 goals?

24 MR. STEPHANY: I promise.

25 CHAIRMAN MINAN: Thank you, Mayor.

1 MAYOR MURPHY: I am going to be in the back waiting
2 for Scott if anything else comes up in the next couple of
3 minutes, but then I've got an 11 o'clock that I have to be
4 at.

5 CHAIRMAN MINAN: Councilman Peters.

6

7 COUNCILMEMBER SCOTT PETERS,

8 MR. PETERS: Thank you again for the opportunity to
9 be here today. For the record, I am Scott Peters. I am
10 the city council representative for District 1 which
11 includes the northern coastline of the City of San Diego.

12 Since being elected, I've been working
13 closely with Mayor Murphy as co-chair of the Clean Water
14 Task Force to find creative strategies that can be
15 effective in improving water quality at our area beaches.

16 And I want to acknowledge and appreciate the
17 participation and insight of John Robertus on the Clean
18 Water Task Force and look forward to his continued
19 participation which has been invaluable for communication
20 and for progress.

21 As the mayor stated, there has been new
22 emphasis placed on water quality at the City of San Diego.
23 We have taken aggressive steps to improve water quality,
24 including a significant rate increase to pay for a billion
25 dollar capital program to repair and replace our aging

1 sewer collection system.

2 Now I want to acknowledge Mr. Stephany's
3 comments that this is not a problem that started just a few
4 years ago, and I really think we're trying to come away
5 from 30 years of neglect with a real program that will
6 work.

7 I'll also just state that the city just
8 completed a \$1.6 billion upgrade to the treatment and
9 disposal facilities, including a major commitment to water
10 reclamation. Over the past decade, we've lengthened the
11 Point Loma Outfall, completed the North City Water
12 Reclamation Plant and the Metro Biosolids Center,
13 completely renovated the Point Loma Wastewater facility to
14 a state-of-the-art chemically-assisted advanced primary
15 treatment facility, and recently finished the South Bay
16 Water Reclamation plant.

17 Additionally, we've improved toxics control
18 by enhancing the Household Hazardous Waste Program, opening
19 a new collection center, and continuing our urban area
20 pretreatment program for controlling industrial sources.

21 I wanted to acknowledge what you said. It
22 is one of the major jobs that the mayor has identified for
23 the city. It's the one he has tasked me with being his
24 partner on. And we're going to do everything we can to
25 stay on task and make sure that we achieve those goals and

1 maybe even exceed them.

2 So I came here today with Mayor Murphy to
3 add my support to the recommendations of the EPA and the
4 Regional Board staff that the modified permit be granted to
5 the City of San Diego.

6 As Mr. Fleming explained, the draft permit
7 contains modifications authorized under Section 301(h) of
8 the Clean Water Act. Those modifications have come to be
9 known as waivers. Unfortunately, the waiver has the
10 connotation of an escape clause or a loophole in the Clean
11 Water Act. When, in fact, a modified permit is in complete
12 compliance with the act and assures that the discharge is
13 receiving full treatment at a level that is protective of
14 the environment.

15 Modifications are not meant to be loopholes,
16 but are an integral part of the Clean Water Act that
17 recognize that in some cases secondary treatment may not be
18 necessary to protect the environment. And, in fact, the
19 modification provisions of Section 301(h) are just as much
20 a part of the Clean Water Act as strict liability or
21 citizen suits or anything else.

22 Each modified permit is taken case by case
23 and is very site specific. A modified permit for one
24 discharger does not have any bearing on, nor does it create
25 a precedent for a modified permit for another discharger.

1 Each must be evaluated on its own merits, and can be
2 approved only after a rigorous technical evaluation.

3 There are 9 findings, as you heard, that
4 must be made for a discharger to receive a modified permit.
5 Among these are that the discharge meet state water quality
6 standards. We're pleased that EPA, after a rigorous
7 technical evaluation, has found that the city meets all
8 9 criteria including that the city's discharges meet state
9 water quality standards.

10 Because the EPA has found that the Point
11 Loma Wastewater Treatment Plant meets all these 9 criteria,
12 we support the recommendation of EPA that this modified
13 permit be granted. Mayor Murphy and our city council have
14 shown our resolve to do what is necessary to ensure public
15 health, preserve the environment, and comply with the law.

16 We support the recommendations of your staff
17 and look forward to working with you in the coming months
18 and into the future. Thank you very much.

19 CHAIRMAN MINAN: Thank you, Councilman Peters.
20 Mr. Tulloch?

21 MR. TULLOCH: Chairman Minan, this concludes our
22 formal presentation. I'll remain available with other city
23 staff to answer any questions you may have, and we
24 appreciate the opportunity to make a summation at the end
25 of public testimony.

1 CHAIRMAN MINAN: I would remind you to make sure
2 that we get a speaker slip so that we can keep track of
3 that. Thank you.

4 That concludes the discharger/city's
5 presentation. I would like to now move to public comment.
6 The first speaker I'd like to recognize is a
7 representative from Congressman Filner's office,
8 Mr. Shogren.

9

10 ANDREW SHOGREN,

11 MR. SHOGREN: Good morning, my name is Andrew
12 Shogren, S-h-o-g-r-e-n. I'm the district director for
13 Congressman Bob Filner.

14 Good morning, Honorable Chair, and
15 chairpersons. I bring a letter of support signed --
16 which is also included in your backup -- that is signed
17 by both Congressman Bob Filner and Congresswoman Susan
18 Davis.

19 I won't read the letter verbatim, but the
20 letter strongly supports the United States Environmental
21 Protection Agency's tentative decision to grant the City of
22 San Diego a modified National Pollutant Discharge
23 Elimination System Permit.

24 The EPA's tentative approval of modified
25 standards suggests that the propagated balance of our

1 ocean's indigenous population is not interfered with or
2 disturbed by the discharge dispersed to the waters through
3 the Point Loma Ocean Outfall.

4 Scientific evidence clearly shows the City
5 of San Diego's wastewater treatment is more than sufficient
6 to protect the marine environment and the health of all
7 San Diegans. The EPA's tentative decision consistently
8 supports the City of San Diego's application and
9 demonstrates any demand for a higher level of treatment
10 at the plant despite already being shown to be unnecessary
11 would impose a grossly unfair economic burden on the city,
12 its participating agencies, and the nearly 2 million
13 affected ratepayers.

14 In closing, the permit proposed by EPA
15 provides for full protection of the public health and
16 environment. By tentatively issuing this permit, the EPA
17 and the Regional Water Quality Control Board recognize that
18 all available scientific information confirms San Diego's
19 current treatment and discharge system causes no
20 environmental harm, and San Diego's waters are safe for
21 humans and marine life. Again, we support the EPA's
22 tentative decision and urge you to do the same. Thank
23 you.

24 CHAIRMAN MINAN: Thank you, Mr. Shogren.
25 Mr. Jay Goldby?

1 JAY GOLDBY,

2 MR. GOLDBY: Good morning to the EPA, to the
3 Regional Water Quality Control Board. My name is Jay
4 Goldby. I am the chair of the Metropolitan Wastewater
5 Commission, the Metropolitan Wastewater Joint Powers
6 Authority, and a member of the Poway City Council.

7 The JPA and Metro Wastewater Commission
8 represent the County of San Diego, the cities of
9 Chula Vista, Coronado, Del Mar, El Cajon, Lemon Grove,
10 La Mesa, National City, Poway, and Imperial Beach, and the
11 water districts of Otay Mesa and Padre Dam.

12 The commission and the JPA have passed a
13 resolution, as have most of the city, supporting the EPA's
14 tentative order for the issuance of the NPDES permit for
15 the Point Loma Treatment Plant.

16 That probably should be enough to be said,
17 but I'd like to make some other comments as well. I'm not
18 a scientist. I'm here representing over 700,000 people who
19 have a critical interest in the quality of the water of
20 San Diego.

21 Because I'm not a scientist, I have to rely
22 on the analysis from those who are most qualified to
23 provide such analysis and evaluation of data. It's evident
24 to me from what we've heard this morning in addition to all
25 the testimony that the bodies that I represent have heard

1 for well over a year that the discharge provides no
2 significant impact on the ocean environment.

3 (Whereupon, Board Member Laurie Black exits
4 the hearing room.)

5 What puzzles me are the different
6 conclusions from the same data from those who are objective
7 and are equally qualified and without prejudice. Now, I
8 would suggest that to presume that the impact on the ocean
9 environment by the Point Loma Wastewater Treatment Plant,
10 that there is no impact would not be objective.

11 However, the question before you as it was
12 before us was whether the discharge has a significant
13 impact on the total ocean environment as well as on the
14 immediately adjacent waters and beach environment.

15 Our conclusion, as it appears the conclusion
16 of the EPA and the Regional Water Quality Control Board, is
17 that there is no significant impact. And it is with that
18 confidence and that certainty that I and the 700,000 people
19 who we represent want to support the tentative order and
20 look forward to another 5 years of continuing efforts to
21 improve our ocean environment. Thank you.

22 CHAIRMAN MINAN: Thank you, Mr. Goldby. Grace, how
23 are you doing? We'll take a 10-minute recess to allow our
24 stenographer to recharge her hands and paper.

25 (Whereupon, a brief recess was taken.)

1 CHAIRMAN MINAN: Thank you. I would at this point
2 like to reconvene our joint public hearing on the renewal
3 of the draft NPDES permit for the Point Loma Treatment
4 Plant. And to the extent that you have conversations, it
5 would be helpful so that we don't have noise interference
6 that you continue your conversations outside of the hearing
7 room.

8 The next public speaker is Mr. Ron Miller.
9 And I would ask you, to the extent that you can, to limit
10 your comments to 3 to 4 minutes. And, of course, we're
11 happy to receive any written materials that you might have.

12

13 RON MILLER,

14 MR. MILLER: Thank you, Chairman, and members of
15 the Board. My name is Ron Miller; that's M-i-l-l-e-r.
16 I'm here today on behalf of the Industrial Environmental
17 Association, also known as the IEA.

18 The members of the IEA -- Well, actually,
19 I'm here to summarize a letter submitted to Mr. John
20 Robertus on March 6th. And in that letter, the IEA members
21 strongly support EPA's tentative decision to grant the
22 City of San Diego a modified NPDES permit. We also request
23 that the Regional Board adopt the recommendations of the
24 EPA.

25 We believe that the scientific evidence

1 clearly shows that City of San Diego's wastewater treatment
2 is sufficient to protect marine environment and human
3 health. To summarize it further, basically, we urge the
4 Regional Board to adopt EPA's recommendations. Thank you.

5 CHAIRMAN MINAN: Thank you, Mr. Miller, and we have
6 a copy of that letter.

7 MR. MILLER: Thank you.

8 CHAIRMAN MINAN: Mr. Peter MacLaggan?
9

10 PETER MacLAGGAN,

11 MR. MacLAGGAN: Thank you, Mr. Chairman, and
12 members of the Board. My name is Peter MacLaggan. The
13 last name is spelled M-a-c-L-a-g-g-a-n. I am before you
14 today representing the San Diego Regional Chamber of
15 Commerce. We strongly support the recommendations
16 contained within the EPA tentative decision.

17 The basis for our position is that the
18 scientific evidence and the ongoing monitoring activities
19 of the City of San Diego clearly support the conclusion
20 that the beneficial uses off the coast of San Diego are
21 being fully protected, environmental health is fully
22 protected, public health is fully protected, and that the
23 city continues to be in compliance with the provisions of
24 the Ocean Plan and the bacteria criteria for the kelp beds.

25 We concur with EPA'S recommendation that

1 reissuance of the waiver is warranted, and we urge the
2 Regional Board to take action consistent with those
3 recommendations. Thank you for the opportunity to address
4 you this morning.

5 CHAIRMAN MINAN: Thank you, Mr. MacLaggan.
6 Mr. David McKinley?

7

8 DAVID MCKINLEY,

9 MR. MCKINLEY: Good morning, I'm David McKinley,
10 M-c-K-i-n-l-e-y. I'm environmental manager at
11 International Specialty Products in San Diego,
12 2145 East Belt Street.

13 We at International Specialty Products have
14 a special cause to be concerned about the city's wastewater
15 discharge from the Point Loma Treatment Plant. You see,
16 the entire reason that our business is located in San Diego
17 is to harvest the rich renewable kelp beds located off the
18 Point Loma -- directly out from the Point Loma Treatment
19 Plant.

20 And we process the kelp into food
21 ingredients that are sold around the world. So in a way,
22 our company is the canary in the coal mine. We are very
23 sensitive to the ocean water quality, especially right off
24 of the Point Loma Treatment Plant.

25 So I'm here as environmental manager of my

1 company to testify that the current advanced primary
2 treatment performed at Point Loma Treatment Plant and the
3 deep ocean outfall is a very good system that we fully
4 support. A waiver from secondary treatment for
5 San Diego's Point Loma Treatment Plant is fully
6 appropriate. Requiring secondary treatment at Point Loma
7 would just be a foolish waste of resources.

8 Therefore, we fully support the renewal of
9 the City of San Diego's 301(h) waiver which will allow the
10 Point Loma Treatment Plant to continue to operate as an
11 advanced primary treatment plant. Thank you.

12 CHAIRMAN MINAN: Thank you, sir. Mr. Robert
13 Simmons?

14

15 ROBERT SIMMONS,

16 MR. SIMMONS: Good morning, Mr. Chairman. I'm
17 Robert Simmons, S-i-m-m-o-n-s, member of the executive
18 committee of the Sierra Club. Members of the Regional
19 Board, Ms. Strauss, members of EPA staff, Sierra Club has
20 no objection to the reissuance of the waived permit, but
21 we do strongly object to two aspects of this proposed
22 permit and urge appropriate revisions.

23 The Sierra Club was involved during 7 years
24 in the '90s with litigation in federal court with EPA, the
25 state, and the city on these issues. And while we

1 ultimately prevailed, we have no wish to go down that road
2 again.

3 I've submitted a detailed explanation of the
4 two objections that we made to you today, and that includes
5 not only an explanation, suggested revisions, but in
6 addition to that, a 5-page legal summary of the sections of
7 the federal and state laws and relevant federal court
8 decisions that support our position in this case.

9 Objection No. 1, that is, the most important
10 of the environmental restrictions or limitations from this
11 discharger are the mass emissions limitations. Mass
12 emissions, of course, most of you know is the total tonnage
13 in metric tons of suspended solids that are not removed,
14 but indeed are discharged into the ocean.

15 The mass emissions permitted under this
16 draft of 15,000 metric tons is 50 percent higher than the
17 actual mass emissions last year and in the previous years
18 during the first of the waiver periods. It clearly and
19 directly violates the most significant element of OPRA
20 Statute 1311(j), but in addition to that, it clearly
21 violates the early Sections 1251 and 1254 of the Clean
22 Water Act that state the primary goal of the Clean Water
23 Act which is, quote, a steady reduction in pollution
24 discharges into receiving waters.

25 Since I negotiated OPRA in '94 on behalf of

1 the Sierra Club, I'm very familiar with the terms of it.
2 And from an environmental standpoint, the most important of
3 OPRA terms is No. 4 which requires a reduction in mass
4 emissions of suspended solids during the 5-year waiver
5 period.

6 The jump of 50 percent from last year's
7 total mass emissions, which were 10,200 metric tons, the
8 jump to 15,000 metric tons in this permit is not only
9 inexplicable, but you don't have to be a lawyer to see that
10 it clearly violates not only the OPRA term, but the basic
11 terms in the act itself. Why? What's the explanation?

12 Well, it's hard to understand there's no
13 mention that I can see in any of the permit documents of
14 the actual mass emissions of 10,200 last year nor prior
15 years, no mention; which is certainly strange considering
16 that data is filed in this very building.

17 How is it explained? There's no explanation
18 anywhere in the permit documents of why the agencies, yours
19 and EPA agencies, believes that the jump to 15,000 metric
20 tons does not violate the act, no explanation of that at
21 all. The only explanation is a factual one saying, Well,
22 we base that 15,000 on the city's estimate of flows in
23 2006. City of San Diego estimates the flows in 4 years
24 from now as 195 MGD.

25 Well, no one in the staff, your staff or the

1 EPA staff, must have looked at what the flows actually are
2 at Point Loma. 195 MGD in 4 years is 20 MGD higher than
3 the actual flows which last year was only 175 MGD. And had
4 any staff person troubled themselves to look at prior data,
5 they will see that contrary to the city's claim that
6 population increases will inevitably drive up the flows,
7 the facts are just the contrary. Over the last 10 years,
8 flows have declined by 8 percent even though population has
9 increased 17 percent. And the reason for that is the
10 required plumbing conservation statewide and within the
11 city.

12 The second objection is there's no mention
13 whatsoever of any required reclamation or reuse of that
14 reclaimed water, none; no requirement that the city reclaim
15 any of its wastewater or reuse any of the water that it
16 does reclaim. The only mention is a very strange white
17 flag that's waved in the general condition section in which
18 parenthetically there is the statement that nothing here
19 requires the dischargers to reclaim any of its wastewater
20 or re-use any wastewater that it does reclaim.

21 Well, I've given you the citations. That's
22 totally wrong. Not only does the Clean Water Act require
23 reclamation, but Judge Brewster in our federal court in
24 1992 in the conclusion of law that I've cited says that,
25 says that the Clean Water Act requires not only the

1 conservation of water, but the prudent use of wastewater.

2 This Board has preeminent authority and
3 responsibility not only to monitor the quality of the
4 offshore ocean, but also to enforce water requirements of
5 the State of California Constitution. You know
6 Article 10, Section 2 provides that there must be not only
7 conservation of water within the state, but prohibits the
8 nonprudent use of water within the state.

9 You've got at least half a dozen Water Code
10 Sections that require the reuse of reclaimed water
11 including one Section at 13000 that says within the coastal
12 zone there should be instead of discharge and waste of
13 water, there should be its application of beneficial uses.

14 1984 the State Board in a Sierra Club case
15 said that hereafter all discharges should be required to
16 explain why they're not reusing rather than discharging
17 their wastewater, and yet not a word.

18 Finally, the agencies need to recognize the
19 clear relationship between wastewater reclamation and
20 reuse, and a reduction in mass emissions into the ocean.
21 Reclamation reuse is not a strategy, as important as that
22 is for supplementing water supply, ladies and gentlemen,
23 you must recognize. But so far in this permit, it's
24 totally unrecognized that every MGD of wastewater that's
25 diverted away from Point Loma into reclamation reuse, every

1 MGD that's diverted to reuse reduces the mass emissions of
2 solids discharged into the ocean by 50 times, 50 times.

3 There's no mention of the 14 MGD of reuse
4 the city will have during this permit period; 7 at North
5 City and 7 at South Bay. There's no mention in this
6 document that that will reduce mass emissions by 800 metric
7 tons. Where is the justification to jump it up to 15,000
8 metric tons?

9 And in addition to that, the city has a
10 potable reuse program that's been approved by all health
11 authorities, all the state and federal agencies, that is
12 collecting dust now by a political decision not to
13 implement it that would reuse an additional 20 MGD.

14 So I ask you and thank you for your efforts.

15 CHAIRMAN MINAN: Thank you, Mr. Simmons. Mr. Erik
16 Bruvold?

17

18 ERIK BRUVOLD,

19 MR. BRUVOLD: Chairman, EPA, and members of the
20 Board, my name is Erik Bruvold, B-r-u-v-o-l-d. And I'm
21 here on behalf of the San Diego Regional Economic
22 Development Corporation today. Our organization is the
23 only regionwide economic development entity with
24 responsibility to work with companies and jurisdictions to
25 create a more prosperous regional economy and enhance San

1 Diego's quality of life.

2 On behalf of our organization, I want to
3 urge and voice our strong support for the USEPA's tentative
4 decision to grant the City of San Diego a modified NPDES
5 permit in a manner consistent with Section 301(h) of the
6 Clean Water Act. The information contained in the EPA's
7 tentative decision clearly shows that the City of
8 San Diego's wastewater treatment methods are more than
9 sufficient to protect the marine environment and the health
10 of all San Diegans.

11 Indeed, that finding is consistent with over
12 15 years of science and research and the ongoing monitoring
13 program that have shown the treatment methods at Point Loma
14 work to benefit all of San Diego. For that reason, we urge
15 you to approve the permit and move forward.

16 But, moreover, it consistently has been
17 shown any demand for higher level of treatment at the plant
18 that would move San Diego to a level of secondary treatment
19 would both, A, not lead to a net improvement in the
20 environment; and, B, put an unfair economic burden on the
21 city, its participating agencies, and nearly 2 million
22 affected ratepayers. Indeed, a number of tentative studies
23 and engineering documents have shown that the cost of
24 moving to secondary treatment could be well in excess of
25 \$2 billion with, again, no net environmental benefit.

1 Again, we'd like to encourage you to adopt
2 the tentative permit as shown. And, again, thank you for
3 the opportunity to communicate with this board.

4 CHAIRMAN MINAN: Thank you, sir, for your
5 testimony. Mr. Steve Zapoticzny?

6

7 STEVE ZAPOTICZNY,

8 MR. ZAPOTICZNY: Good morning, Chairman Minan,
9 members of the Board, and Ms. Strauss. My name is Steve
10 Zapoticzny; that's Z-a-p-o-t-i-c-z-n-y. I am here this
11 morning representing the Safe Treatment Coalition, the Safe
12 and Fair Environmental Treatment Coalition as chairman,
13 and also CP Kelco as their director of environmental
14 safety and health.

15 The Safe Treatment Coalition strongly
16 supports the EPA's tentative decision to grant the City of
17 San Diego a modified NPDES permit, and request the Regional
18 Quality Control Board to do the same.

19 The Safe Treatment Coalition is a
20 single-issue public coalition of local community groups,
21 businesses, labor, elected officials, scientists, and
22 individuals concerned about any effort to force San Diego
23 to a higher level of sewage treatment than other similar
24 cities are required to under the Clean Water Act.

25 As we've heard several times this morning,

1 and especially from EPA, scientific evidence clearly shows
2 that the City of San Diego's wastewater treatment is more
3 than sufficient to protect the marine environment and the
4 health of all San Diegans. The Safe Treatment Coalition
5 took the extraordinary step of conducting an independent
6 review of the city's monitoring and analysis, and I believe
7 you have a copy of that. All board members have a copy.
8 It was dated January 2002.

9 In summary, the science panel found the
10 Point Loma Treatment Plant's permitted discharge does not
11 impact the San Diego shoreline. The secondary treatment
12 standards will not solve or reduce San Diego's beach and
13 bay closures because the closures appear to be caused by
14 pollution from other sources, and we heard more details
15 earlier this morning from Mayor Murphy on that issue.
16 Extensive monitoring of the city's discharge has not been
17 found harmful to the ocean environment.

18 Both Safe's independent report, and more
19 significantly, EPA's tentative decision consistently
20 support the City of San Diego's application. Further, they
21 demonstrate any demand for a higher level of treatment at
22 the plant despite already being shown to be unnecessary
23 would impose a grossly unfair economic burden on the city,
24 its participating agencies, and the nearly 2 million
25 affected ratepayers. We heard numbers this morning of over

1 \$2 billion. That may be a very conservative number, but it
2 would be a very expensive move forward to go to secondary
3 treatment.

4 The permit proposed by the EPA we feel
5 provides for full protection of the public health and
6 environment. By tentatively issuing this permit, EPA and
7 the Regional Water Quality Control Board recognize what all
8 available scientific information confirms: San Diego's
9 current system causes no environmental harm, and San
10 Diego's water are safe for humans and marine life.

11 Again, I support the EPA's tentative
12 decision and urge you to do the same, and thank you for
13 allowing me to appear this morning, Chairman.

14 CHAIRMAN MINAN: Thank you. Mr. Marco Gonzalez?

15 MR. GONZALEZ: Mr. Minan, I believe we submitted
16 some slips in an order. We're going to have Ed Kimura
17 start off our organized -- semi-organized presentation.

18 CHAIRMAN MINAN: Okay. Yes, I see it. Ed Kimura?

19

20 ED KIMURA,

21 MR. KIMURA: Thank you, Mr. Chairman, Ms. Strauss,
22 and members of the Board. My name is Ed Kimura. That's
23 spelled K-i-m-u-r-a. I'm speaking on behalf of the
24 Bay Council. Thank you for this opportunity to provide
25 comments on the renewal permit.

1 Bay Council is a coalition of environmental
2 groups dedicated to the protection and restoration of our
3 coastal waters. The Surfrider Foundation, the San Diego
4 Baykeeper, the San Diego Audubon Society, Environmental
5 Health Coalition, and the Sierra Club are signatories to
6 the comment letter on this renewal permit that I just
7 submitted to you today.

8 We have considered the short-term impacts,
9 meaning less than 5 years, and the long term impacts, more
10 than 5 years, of the effluents from the Point Loma
11 Treatment Plant on human health and the marine environment.

12 In the short-term, the duration of the new
13 permit, we accept the principal terms of the waiver, and
14 that is the biochemical oxygen demand and the TSS, total
15 suspended solids. These remain unchanged from the OPRA
16 requirements in the expired permit. With this exception,
17 however, we cannot support the renewal permit without
18 significant improvements to the ocean Monitoring and
19 Reporting Program. And I'll explain some of those in just
20 a few words here.

21 First, I would like to summarize, really,
22 two concerns: the EPA analysis and the need for major
23 improvements in the elements of an ocean monitoring
24 program. The time that we have been allowed to review the
25 permit was really inadequate for us to allow an in-depth

1 review of the EPA analysis.

2 The EPA analysis, in our view, is somewhat
3 disappointing because it is very difficult to read and
4 gather substantial information from the charts that were
5 being presented. The scales were so small that I really
6 couldn't determine what the predictions might be.

7 And this is one of the other concerns that
8 we have if we look at it from the long-term effects, we
9 need to know fairly soon how these trends are taking place
10 in the ocean, and we really need a solid database to do
11 that. Therefore, we think we need to have new types of
12 data, expanded sampling sites, necessary to estimate these
13 long-term effects.

14 And here are some of the key elements that
15 we need to significantly improve the Monitoring and
16 Reporting Program: first, new monitoring to detect health
17 threatening pathogens including parasites and viruses. We
18 heard the description today that there are no bacterial
19 flows coming from the plant that we can detect from the
20 kelp beds, but the lifetimes of these viruses are much
21 longer. And so at this stage of the game, the absence of a
22 bacteria does not indicate an absence of a health
23 threatening pathogen.

24 Secondly, we need to increase the sampling
25 sites and integrate the water monitoring program with a

1 following third item, and that's the remote sensing
2 monitoring. We need to have these tied together. And
3 there are various types, some of which are already being
4 implemented, to sample a large area in the South Bay, the
5 Point Loma Outfalls, as well as the effluents coming from
6 Mexico, the flows from the Tijuana River and the urban
7 runoff.

8 A fourth item, we need to add deep ocean
9 monitoring. At the present time, there's very little
10 information of the ocean environment much deeper than,
11 let's say, 350 feet. And the outfall is right off of the
12 shelf, and there are some sediment traps that I think the
13 ocean monitoring report mentioned. And if that's taking
14 place, are we accumulating some of these mass emissions
15 into the sediment traps?

16 And, fifth, we need to require an
17 independent qualified body to review and prepare annual
18 reports on the status of the ocean monitoring. This is
19 very important because we need to, again, get not only the
20 independent, but information on a timely basis rather than
21 waiting on a 5-year cycle, which I think if we continued on
22 this path, we really need to get this information sooner
23 rather than later that there is a problem occurring.

24 And then, finally, we need to provide --
25 We're asking you to provide the data to the public in

1 electronic form. I've been conducting a lot of analysis on
2 my own, and it's very, very time consuming to take the data
3 that comes out in the ocean monitoring reports and
4 transcribe that by hand into my computer to analyze. And
5 if we had it in electronic form, that would certainly cut
6 down the amount of time.

7 Well, those are my remarks today. Thank you
8 very much.

9 CHAIRMAN MINAN: Thank you, Mr. Kimura.
10 Ms. Stephanie Pacey?

11

12 STEPHANIE PACEY,

13 MS. PACEY: Hi, my name is Stephanie Pacey; that's
14 P-a-c-e-y. I'm the associate attorney with San Diego
15 Baykeeper, and I just have a few comments to make.

16 My first concern is the 50 percent jump in
17 mass emissions. That's hard to accept. It isn't necessary
18 and should be significantly lower. That being said, we
19 only have 5 years of data that we're working from. We
20 can't possibly make reliable conclusions from that limited
21 information.

22 To the extent that the city would have us
23 believe that final conclusions can be made is ridiculous.
24 Monitoring needs to be significantly improved and
25 performed for a much longer period of time before it is

1 considered conclusive.

2 Another issue I'd like to address is
3 reclamation. What's the point of reclaiming 45 million
4 gallons of water if it's not being put to beneficial use?
5 That program should be developed and implemented as soon as
6 possible.

7 Finally, I'd like to touch on the absence in
8 the tentative decision of the impacts on wildlife. Marine
9 mammals and birds both feed on the fish. The
10 bioaccumulation of the toxic material in the fish and the
11 effects on the reproductive and general health of these
12 species need to be addressed. Thank you.

13 CHAIRMAN MINAN: Thank you. Mr. Jim Peugh?

14

15 JIM PEUGH,

16 MR. PEUGH: Hi, I'm Jim Peugh, Coastal Wetlands
17 Conservation Chair of the San Diego Audubon Society. Peugh
18 is P-e-u-g-h, the most difficult way you can think to spell
19 it.

20 The 301(h) permit must not be issued if the
21 proposed discharge will adversely impact threatened or
22 endangered species. You all know that, I'm sure.

23 The evaluation, you know, the monitoring
24 plan looks at plankton, shellfish, and fish. There are
25 lots of fish-eating birds and lots of marine mammals that

1 eat those fish. Obviously, it's great to concentrate on
2 those. Those are the bottom of the food chain. That's the
3 easiest place to find things because they tend to be local
4 to the area, and we know a lot about them.

5 But I want to remind you that the way we
6 discovered that DDT had impacts on the food chain was we
7 discovered that birds that eat fish were having problems,
8 and then we started looking into what was in the fish. So
9 it wasn't found the obvious way of analyzing fish tissue.
10 It was found the more complicated way of animals that were
11 foraging on fish.

12 I think that there's a real weakness -- not
13 a weakness, it's good that we're concentrating on those,
14 and we really need to do that. But, also, the plan needs
15 to look -- sort of as Stephanie implied -- at sort of
16 general ocean health. And in particular, we know that
17 birds and marine mammals directly eat these fish. So some
18 level of monitoring needs to be done on these higher parts
19 of the food chain.

20 We also know that conceivably something to
21 the effect that people are getting sick, you know, maybe
22 you can trace back what problems are. Again, we don't
23 disagree that shellfish, plankton, and fish are a good
24 place to start, but we want you to look at the -- you know,
25 besides looking at a microscope of this problem, you need

1 to stand back and look at the whole problem at the same
2 time. And we think that the monitoring plan fails to do
3 that.

4 We also would like more of a thought about
5 cumulative impacts with respect to other sources of
6 pollution. We know that there's urban runoff that's going
7 to interact with what comes out of the ocean outfall. Stuff
8 from airborne pollution is deposited into the ocean.
9 There's ocean dumping not far away, and there are other
10 treatment plant outfalls.

11 One could say, well, they don't physically
12 mix, but that's not the only way things can interact. We
13 know that wildlife forages near all of them and is affected
14 by all those sources. So we hope that, again, in stepping
15 back a little bit and looking at this problem from a larger
16 scale, as well as with a microscope, that you look at
17 cumulative impacts from other sources.

18 And also cumulative impacts over time,
19 someone before mentioned long-term impacts. People that
20 said that since we haven't seen any impact from the
21 discharge now, that there is none. We don't know if
22 there's some impacts that we haven't noticed that will be
23 more noticeable in the future. We don't know if there are
24 impacts that are collecting that we just haven't gotten to
25 a level of detection.

1 So I'm really concerned with people that are
2 eager to say that there's been no impact with 5 years of
3 data; therefore, there are no impacts and let's just
4 eagerly move along.

5 We applaud the city council's broad
6 investments and efforts to clean up our waters. However,
7 we all know that politicians change, and 4 or 8 years from
8 now that can be totally different. We hope that the
9 monitoring program will be adequate to clearly indicate
10 whether there's problems in the future that we can deal
11 with them.

12 And also I'm really concerned with the
13 15,000 tons of total suspended solids. We know that in the
14 acronym "NPDES," "DE" is "discharge elimination." We know
15 that in "OPRA," the "R" is "reduction." I don't see how
16 this 15,000 tons of total suspended solids, you know, way
17 above what's needed, fits in with either of those acronyms.
18 Thank you.

19 CHAIRMAN MINAN: Thank you, Mr. Peugh. Mr. Reznik?

20

21 BRUCE REZNIK,

22 MR. REZNIK: Good morning, again. I am Bruce
23 Reznik Executive Director of San Diego Baykeeper. Thanks
24 for the opportunity to speak on this issue.

25 It's obviously a critical issue for

1 San Diego and not just for San Diego, but statewide as
2 waivers are coming up in various places throughout
3 California. I think it's important to say just in
4 principal we are not supportive of waivers. I think they
5 set a bad precedent that they're not sufficiently
6 protective and that -- as Jim just alluded to -- they take
7 the "E" out of NPDES.

8 With that said, what we're talking about
9 here or what my testimony is going to be about is what we
10 think is minimally needed in this instance. You've heard
11 basically everything I'm going to be touching on. The
12 first is no increase in mass emissions.

13 The main thing I'm going to be focusing on
14 is monitoring. It's something that relates to what I spoke
15 to this morning with the sediments and something that
16 concerns us a great deal. One of the issues of the
17 testimony I've heard so far, the two issues that kind of
18 jumped out at me is you have this concept that we have
19 enough data and that we can make conclusions from that
20 data.

21 We've had our experts look at it in the
22 environmental community and outside folks, and we just
23 don't feel that's the case that we have enough data as it
24 stands, that we have enough monitoring stations, that we're
25 looking at the right things, including you've heard a lot

1 of discussion on human and land-based pathogens and marine
2 mammals and those impacts and the studies that are going on
3 statewide looking at those types of things.

4 So we think we need at a minimum additional
5 monitoring. We can't continue to use the ocean as a
6 dumping ground without really understanding the full
7 impacts and jumping to conclusions. It's unconscionable
8 and we think it's illegal.

9 Second, and, again, this relates directly to
10 what is going on with the sediment issue, this needs to be
11 independent. And by "independent," I don't mean an
12 Orwellian-named group doing the monitoring. We mean
13 controlled by this regional board, controlled by EPA.

14 It is just simply a bad idea to let groups
15 with a vested interest continue to monitor, to do their own
16 monitoring, to conduct their own studies, to do their own
17 study designs. It's classic "fox guarding the henhouse."
18 It isn't working on the sediment issue; it won't work here.
19 We need resources brought in-house, and then you guys, the
20 Regional Board/EPA, are the ones conducting those studies
21 using those independent groups overseeing them and working
22 with the study, design, and developing the protocols.

23 It's the only way to ensure -- and it also
24 reduces the burden, first of all, on the environmental
25 community because we're going to have a lot more faith and

1 not have to expend our own resources doing independent. It
2 also eases the burden on your own staff and your own
3 organizations.

4 Right now there's a scrambling of resources
5 trying to analyze multimillion-dollar studies being
6 undertaken by the shipyards. There is not the expertise,
7 the experience, or the resources on your own staff to do
8 that. So bring the resources in-house that the city is
9 saving on not doing secondary treatment, and do independent
10 studies.

11 The other thing that we would add on the
12 studies, we don't know all the studies that need to happen.
13 It's an issue of process. What I'm asking is that the
14 environmental community sit at the table early on in
15 developing the process for those studies that are going to
16 be undertaken and the monitoring that's going to be
17 undertaken.

18 The last thing that I would ask because it's
19 one of the things that's been brought up that kind of got
20 my goat was the concept that it's going to be a \$2 billion
21 proposition to get to secondary. Again, we've had experts
22 look at it, and we think that's an absurd figure. And
23 maybe as part of this permit you can have an independent
24 group of economists look at what it would really take to
25 get secondary treatment in San Diego. Thank you very much.

1 CHAIRMAN MINAN: Thank you, Mr. Reznik. Mr. Marco
2 Gonzalez?

3
4 MARCO GONZALEZ,

5 MR. GONZALEZ: Thank you, Mr. Chairman, members of
6 the Board, Ms. Strauss, and your staff. My name is Marco
7 Gonzalez; that's G-o-n-z-a-l-e-z. I'm here as a member of
8 the Bay Council, attorney for San Diego Baykeeper, and
9 Chairman of the San Diego County Chapter of the Surfrider
10 Foundation.

11 I'm going to try not to just echo the
12 concerns of my colleagues who came before you, but I would
13 like to say that the letter submitted by Mr. Simmons and
14 the rather eloquent statements he made are wholeheartedly
15 supported by the entire Bay Council. We have over the last
16 couple -- few months, really, met on this subject, and we
17 have come to consensus within the environmental community
18 on these positions.

19 But this raises another issue. You know,
20 last fall we were under the impression that this permit in
21 draft form was going to be issued sometime in the late fall
22 or very early winter. We recognized that the city and EPA
23 were involved in litigation over the last number of years,
24 but most specifically over the last year and half, over the
25 interpretation of OPRA and whether it would apply to this

1 permit renewal process.

2 That being said, we really didn't know the
3 deal that was being struck in response to the 9th
4 Circuit's ruling on the matter. In essence, we didn't know
5 if the permit was going to come down with an aggressive
6 interpretation of OPRA, whether it was going to be a
7 mimicking of the OPRA standards, as it turned out to be, or
8 whether it was going to be some sort of a wholesale walk
9 away from the standards that were created then.

10 That being said, we understand that these
11 hearings and approval or consideration of this permit is
12 being driven by court orders to some extent. But
13 nonetheless, as an environmental community, we have not had
14 the time in which to respond to what, in our opinion, is
15 one of if not the most important permit to the citizens of
16 San Diego County. To whatever extent we could extend the
17 comment period an additional 30 days, we would really
18 appreciate that.

19 Moving on to more substantive measures, I
20 would echo the sentiments of my colleagues that the
21 wholesale jump to 15,000 metric tons of TSS disposal is
22 wholly unjustified on the record. It seems to me that by
23 reading the TDD issued by the EPA is that it's based upon
24 what the city has said they could achieve in the past, what
25 they have achieved in the past, and the projected flows

1 that we expect to be coming out of the outfall over the
2 next 5 years.

3 As Mr. Simmons pointed out, if we go back
4 and actually look at the numbers, well, first of all, not
5 only does the city tend to overestimate its growth, as --
6 SANDAG was found to have done recently -- but they
7 overestimate their flows. And, in fact, if you look at
8 growth rate and flows, as Mr. Simmons pointed out, we've
9 seen a reduction.

10 Therefore, what we would like to see is a
11 permit that reflects what the city can really achieve.
12 8,888 metric tons of solids being discharged are the last
13 numbers that I have seen. Why are we allowing them an over
14 50 percent increase without giving us some sort of
15 scientific validation for that? We want to know where you
16 came up with that number.

17 And quite frankly, if this was a deal that
18 was struck in response to the litigation, and if everybody
19 is laying their cards face down so that we can fight this
20 fight on more substantive grounds in 5 years, just let us
21 know that so that we can sit there with you.

22 Moving on to what I feel are the really
23 important parts of this... You know, OPRA required
24 45 million gallons a day of water reclamation. Where is
25 the beneficial reuse of this water? What good does it do

1 any of us to reclaim the water if we're just going to take
2 that treatment level and throw it right back into the pipe?

3 And a very interesting nuance of this, let's
4 look at what happens to the MGD that isn't beneficially
5 reused, because clearly there is a small portion that is
6 being piped out into the community for reuse. After water
7 is treated to secondary standards, that is, the water
8 that's not going to be reused and treated to tertiary
9 standards, that secondarily treated water is pumped back
10 into the system along with the raw sewage and treated once
11 again at the Point Loma Treatment Plant.

12 In essence, the secondarily treated water is
13 used to dilute the raw input into Point Loma, thereby, in
14 my opinion, reducing the reductions that are able to occur
15 at that plant. If you took that secondarily treated water
16 and discharged it by some other mechanism out one of the
17 outfalls without co-mingling it with the raw sewage that's
18 entering into the Point Loma Treatment Plant, you wouldn't
19 have the dilution of that raw sewage.

20 And, in fact, you would have the treatment
21 system at Point Loma affecting a more dense stream, and
22 hopefully removing more of those solids. It's all going to
23 be co-mingled when it gets out into the deep ocean. Let's
24 give as much treatment to the raw sewage as we can.

25 On the issue of monitoring, just as we did

1 in the South Bay with our lawsuit against the International
2 Boundary Water Commission, we looked at the staff on board
3 at the city, and we don't find a Ph.D. in physical
4 oceanography. We don't find that on your staff. We don't
5 see the Regional Water Board or the EPA conducting the
6 types of assessments that we would get out of an expert out
7 of Scripps or some other similarly poised academic body.

8 We think that in order to truly understand
9 the fate and transport of the plume and the discharges from
10 this outfall, you really need to go back to the well of
11 academia and find people who are going to assess the city's
12 current monitoring program, advise you independently of the
13 pitfalls of that program, or perhaps just the windows where
14 the data just doesn't fill in, and then have Dave Hanson
15 and your staff go back to the city and craft a monitoring
16 program which provides for an additional physical
17 monitoring, whether it's remote sensing or something
18 similar to the CODAR study which is going to be implemented
19 in the South Bay through a grant and a partnership with the
20 City of Imperial Beach.

21 That being said, I think that we have to
22 take care that there is an antidegradation standard and a
23 standard also in the Clean Water Act and under the waiver
24 provision that we not negatively impact the ocean
25 environment in the area surrounding the discharge. The

1 trends that will truly determine whether these standards
2 are being met are not 3-year, 5-year, or really even
3 10-year trends. These are long-term trends that are going
4 to have to be studied at every level for a long time.

5 Therefore, I would echo what Jim said and
6 that is that just because we haven't seen the impact yet,
7 it doesn't mean that something isn't going on there. We
8 really have to be giving the monitoring program a very
9 strong look at the minute trends because once they reach a
10 certain point and bloom up, it's going to be a lot harder
11 to fix it after the fact.

12 In conclusion, I'd just like to reiterate
13 what Bruce said, and that is to our compatriots in Orange
14 County and Goleta and all over the state who are dealing
15 with the waiver issue, clearly we have a different
16 situation here because of OPRA. Clearly we have a
17 different situation because our outfall extends 4 1/2 miles
18 out and 310 feet deep. But that being said, the notion of
19 a waiver is something that we should all abhor.

20 The cost estimates to come up to secondary
21 treatment in Orange County are \$300- to \$400 million. The
22 cost to build the Hyperion Treatment Plant in Los Angeles
23 with all the bells and whistles was \$1 billion.

24 That being said, I would carefully
25 reconsider the cost estimates being put forward by the

1 city, and at some point in the near future I would go back
2 to the citizens of San Diego and ask where would they like
3 their money spent. And I think they would like their money
4 spent on a deep ocean outfall with discharges that meet
5 secondary requirements, if not in the next 5 years,
6 certainly at that time. Thank you.

7 CHAIRMAN MINAN: Thank you, Mr. Gonzalez. Mr. Paul
8 Dayton?

9

10 PAUL DAYTON,

11 MR. DAYTON: Good morning, I'm Paul Dayton. I'm a
12 professor at Scripps Institution of Oceanography. I am a
13 benthic ecologist, and I am here to address my work in the
14 kelp forest where we have some 30 years' worth of baseline
15 data. We collect the baseline data very carefully because
16 we really are studying anomalies, and we have to have
17 something to contrast the anomalies with.

18 So we have been focusing on anomalies.
19 We've been looking very carefully for effects and impacts
20 and anomalies that might relate to the outfall, and we
21 haven't seen any trace or any hint of any outfall anomalies
22 in the parameters that we studied in the kelp forest.

23 I am a benthic ecologist, and I also am
24 concerned with just sea bottoms of all sorts. And I think
25 that the monitoring program that we have here has produced

1 perhaps arguably for that deep water habitat the best sort
2 of big picture of a benthic habitat in the world.

3 It's a really excellent description of a
4 community that most of us can't dive on and most of us
5 can't study. So I have also been just looking at the
6 annual reports and keep track of them out of academic
7 interests, and I have not seen any impact that would
8 discredit the waiver.

9 Where you have a sewer outfall it certainly
10 might have some impacts, but I haven't seen any impacts
11 that I can actually trace to the outfall with my level of
12 knowledge. Certainly, there's nothing there that would
13 argue against continuing the system as it stands. Thank
14 you very much.

15 CHAIRMAN MINAN: Thank you, sir. Mr. James
16 McDonald?

17

18 JAMES McDONALD,

19 MR. McDONALD: Good morning, ladies and gentlemen.
20 My name is James McDonald, M-c-D-o-n-a-l-d. Although I am
21 a member of several environmental organizations and am a
22 former federal EPA regional enforcement chief, I am
23 appearing here today in my own right.

24 San Diego has some of the nation's finest
25 physical water assets, assets that you would think the city

1 would go all out to protect and enhance. But that's not
2 the case. Instead, it has a history of dragging its feet
3 or just trying to get by, of doing as little as possible
4 when it comes to water quality.

5 The permit before you today is a perfect
6 example. Rather than accepting a permit reflecting at
7 least the degree of treatment of other large ocean
8 dischargers, the city wants to continue its old ways of
9 getting by with as little as it can.

10 The city has always operated that way even
11 though it now professes to a new environmental outlook as
12 far as protecting water quality goes. Let's face it,
13 San Diego is in a time warp. When I first started working
14 in the field of water pollution control years ago, many
15 dischargers felt that dilution was the solution to
16 pollution. That was espoused to allow its proponents to
17 get by with little, and in some cases, no treatment of its
18 waste.

19 The Clean Water Act was enacted to overthrow
20 that concept. Nevertheless, San Diego persists in pursuing
21 that outmoded concept instead of diligently wanting to
22 actually enhance and protect the receiving waters of its
23 wastes.

24 Where does that leave San Diego? Well, it
25 leaves it as the largest city in the United States without

1 secondary treatment of its waste. That's quite a
2 distinction. No. 1, that's the legacy it wants to continue
3 today. It wants to perpetuate the rejected concept of
4 dilution is the solution to pollution.

5 Although I know this is a pro forma hearing
6 and chances are that there will be no rejection of the
7 waiver, I nevertheless urge you to reject San Diego's
8 outmoded thinking and to bring the city up to a level of
9 treatment commensurate with that of other large cities
10 throughout the United States.

11 I say bring San Diego kicking and screaming
12 into the 21st century. It steadfastly refuses to do so by
13 itself. And what I heard today from the federal and state
14 regulatory agencies was really most disappointing. It was
15 essentially a pleading by those regulatory agencies of the
16 city's case for a waiver. I think it's a job of a
17 regulatory agency to show the benefits of upholding the
18 secondary treatment requirement of the Clean Water Act, not
19 to plead the city's case for a lower treatment standard or
20 waiver.

21 The state and federal agencies, really,
22 ladies and gentlemen, seem to have it backwards. That
23 concludes my testimony, and thank you very much.

24 CHAIRMAN MINAN: Thank you, Mr. McDonald. You
25 have, obviously, an enthusiastic supporter or supporters.

1 Mr. Tom McHenry?

2 MR. McHENRY: Mr. Chairman, I'll rely upon my
3 written comments. Thank you.

4 CHAIRMAN MINAN: Thank you, sir. Mr. Larry Porter?
5

6 LARRY PORTER,

7 MR. PORTER: Mr. Chairman, Board members, and staff
8 from the EPA, and members of the public, my name is Larry
9 Porter. I'm a proud member of the Ocean Outfall Group, and
10 we are a group of concerned citizens who have been having a
11 discussion with the Orange County Sanitation District now
12 for about a year and a quarter in regards to its waiver
13 from the full secondary treatment standards. Now they are
14 discharging half primary and half secondary.

15 (Whereupon, Board Member Ghio exits the
16 hearing room.)

17 And I am here today to share with you some
18 of the things that we have come to learn about sewage
19 treatment and what it means to the environment. I may
20 reiterate some of the things that have been said, but it's
21 most important.

22 You have heard today about bacteria.
23 Bacteria is not the only element that is discharged. There
24 are viruses, there are pharmaceuticals, there are hormones,
25 there are endocrine disruptors, and there are chemical

1 compounds that once they go into the pipe together, they
2 combine into new chemical compounds that man has no idea
3 what will transpire into the environment into which they
4 are discharged. In Newport Beach and in Huntington Beach
5 if you are going to join the junior lifeguards, it is
6 mandatory that you get a hepatitis A shot.

7 The monitoring program, I assume, is the
8 same for San Diego as it is for Orange County. It can't
9 even come close to describing the environment in which the
10 discharge is taking place. It is intermittent at best. It
11 is not even close to being a scientific endeavor, of being
12 conclusive as to what is going on in the environment.

13 In Orange County there's no consideration
14 whatsoever for the migratory pelagic animals, i.e., the
15 whales. Is this like the issue of smoking where for so
16 long it was considered, no, smoking is not harmful to one's
17 health, that what we throw out our pipes and how we
18 callously disregard the level and the constituents of our
19 waste, that it will not come back and bite us and harm us?
20 Is this not the very same?

21 So thank you for letting me share some
22 things that we have come to learn and that we now have
23 6 cities who have adopted resolutions against this waiver.
24 And just yesterday there has been a momentous adoption
25 against the waiver held by the Orange County Sanitation

1 District by the City of Irvine and the Irvine Ranch Water
2 District. And one can read between the lines and,
3 therefore, the Irvine Company.

4 Thank you very much. The public outcry in
5 Orange County is growing and growing. Whenever we talk to
6 people about what is going out that pipe, they say, my God,
7 that can't be true. What kind of a civilization are we
8 living in? Thank you.

9 CHAIRMAN MINAN: Thank you, Mr. Porter. Mr. Doug
10 Korthof?

11

12 DOUG KORTHOF,

13 MR. KORTHOF: That's correct. Doug Korthof, I live
14 in Seal Beach, K-o-r-t-h-o-f. I'm an ordinary citizen, and
15 like most people I found out about these waivers about a
16 year ago. And like most people, I'm appalled.

17 I want to put things into perspective here.
18 San Diego has the second largest waiver in the country.
19 There's only 36 waivers remaining. 208 were originally
20 granted, as you well know. Waivers have been lost. All
21 the other cities, all the other major cities, all the other
22 districts, 16,000 of them, perform a minimum of full
23 secondary treatment.

24 As the Irvine Ranch Water District said,
25 secondary treatment is not enough. We need to go beyond

1 that. You guys and us in Orange County and Goleta,
2 Morro Bay are not even to that basic minimum standard. As
3 they said, we're not talking here about upgrading from a
4 Buick to a Cadillac. We're talking about going from
5 walking to driving at all.

6 This issue concerns the ocean, and we have a
7 sacred obligation -- I'll repeat that -- a sacred
8 obligation as people on the coast to safeguard the ocean.
9 By the square-cube law, the amount of area along the coast
10 increases as a linear area, and in the interior it's
11 square. So there's much less area along the coast. The
12 coast is a critical zone of value to everybody in the
13 entire community, and it must be protected.

14 Orange County Sanitation District said there
15 was no problem. They said it would cost a billion dollars.
16 They said the plume stays off shore. They said there's a
17 barrier of clean water. It turns out monitoring studies,
18 no matter how comprehensive, can never do an adequate
19 enough job. It would take hundreds of millions or perhaps
20 tens of billions of dollars to begin to do an adequate
21 study of benthic and oceanic currents.

22 Secondly, the cost estimates evaporated. It
23 turns out that all the things they said about cost
24 evaporated down to maybe a few cents a day. The plume
25 stays off shore. Well, the tests have shown now -- they

1 have to admit it, they knew it since 1987 -- that the plume
2 comes ashore in Orange County.

3 They said there was a barrier. It turns out
4 the barrier of clean water only protects against the
5 surface transport, and it doesn't protect against low fecal
6 content which migrates inshore and then accumulates along
7 the shore.

8 So the entire house of cards collapsed under
9 scrutiny, and it would collapse here. And someone needs to
10 say that because you need to hear it, that this waiver
11 needs to be denied. Is San Diego unique? No, San Diego is
12 just another district that's trying to duck its
13 responsibilities. There's 36 of them. Some of them have
14 an excuse like Anchorage, Alaska. San Diego and Orange
15 County don't. If you have an excuse, it's that there's a
16 problem with implementation.

17 We need to have a general goal of restoring
18 and healing our ocean, our fish, our rivers, our watersheds
19 to get back to where we once were. We need to adopt this
20 as a credos saying, "This is what our job is, our goal."

21 Words are not enough. In Orange County we
22 can start right now because we have the money. We're a
23 rich county. In Goleta and Morro Bay there may be a
24 problem because they have to hook to Santa Barbara.

25 In San Diego you need to deny the waiver

1 right now and generate a plan. Put first things first. Put
2 that plan, that goal of a clean ocean first. Deny the
3 waiver and say practical matters means that we'll have to
4 devise an implementation and phasing plan to get there.
5 But right now we need to take the position against the
6 waiver and deny the waiver.

7 Whatever you do to get there to that
8 position, maybe like in Los Angeles you have to go through
9 a process of building a plant... Now, it's been said that
10 there is life at the end of the outfall. I would suggest
11 to you that if the effluent is so good for the ocean,
12 maybe you're suggesting it's such a great thing that all
13 these studies supposedly show, that it's such a great
14 thing.

15 Are you seriously suggesting that all the
16 other plants along the ocean, which are also situated along
17 deep ocean currents, all of them should tear out their
18 sewage treatment plants? Maybe sewage is really good.
19 Maybe we should just let it flow down the streets. No,
20 that's clearly bizarre.

21 We need to implement not only full secondary
22 treatment, we need to look at the environment we're in is
23 like a spaceship. There's too many people to allow us to
24 live within our own detritus. As you all know, the petri
25 dish experiment shows that in the long run, your quality of

1 life degrades unacceptably when you live in your own waste
2 material.

3 There must be a limit to where this has to
4 stop, and where it stops is right here. Deny the waiver.
5 You can do it today, and when you come to this decision,
6 and the people expect you to do it. All the testimony you
7 have heard by people making excuses and saying that we need
8 more studies and it goes on and on, it doesn't need more
9 studies. The studies were done in 1972. The studies are
10 there.

11 Secondary treatment is a minimum, full
12 treatment, as much treatment as we can possibly do to keep
13 the detritus of the land on the land and to preserve the
14 ocean to what it once was. We don't know the damage that
15 we are doing. The damage that is happening to the ocean
16 now will be the legacy we'll leave to our children and your
17 children and your descendants, too.

18 I'll ask you now, deny this waiver. It's
19 your responsibility; it's your duty. Thank you.

20 CHAIRMAN MINAN: Thank you, sir. I have no more
21 public speaker slips on this agenda item; therefore, I will
22 close this agenda item.

23 I'm sorry, you're absolutely right. Scott,
24 you had some closing comments. And I think, staff, you're
25 entitled to make closing comments.

1 SCOTT TULLOCH,

2 MR. TULLOCH: Scott Tulloch, City of San Diego.

3 I'd like to reiterate our appreciation for the work done by
4 the EPA and Regional Water Quality Control Board staffs for
5 their efforts in reviewing the vast amounts of technical
6 data.

7 What the City of San Diego is about is not
8 whether or not to protect the environment, but how to do
9 it. We believe that the draft permit will ensure
10 protection of the environment, and we urge you to adopt it.
11 We are committed to take all necessary actions to ensure
12 compliance with the conditions in the permit. We're also
13 committed to doing the monitoring and necessary scientific
14 studies to ensure that the public health and environment
15 are protected in the future.

16 We currently comply with the monitoring
17 program that's laid out to us by the Regional Board staff
18 and the EPA. We submit the results of that. We take
19 samples someplace out there every week, and we submit those
20 results monthly to both the Board and the EPA every year
21 annually. We don't wait every 5 years, but annually we
22 analyze those results, those samples, and provide that
23 analysis to the EPA and the Board.

24 If the EPA and the Board decide over the
25 course of the next month or any time in the future that

1 there is additional monitoring that would benefit all of us
2 in knowing what's happening out there and what the trends
3 are, we stand ready to do that. And that concludes our
4 remarks. Thank you very much.

5 CHAIRMAN MINAN: Thank you, Mr. Tulloch.
6 Mr. Hanson, closing comments or thoughts for the Board at
7 this point?

8 MR. HANSON: I have no additional comments, but I
9 would like to say that we will thoughtfully consider all
10 the written and oral comments received here today and
11 provide you with our responses for you to consider at the
12 April 10th hearing.

13 CHAIRMAN MINAN: Thank you. Mr. Fleming?

14 MR. FLEMING: I have no formal comments. The only
15 thing I'd like to --

16 CHAIRMAN MINAN: Would you speak into the
17 microphone so it can be picked up for the record.

18 MR. FLEMING: I have no formal comments. My goal
19 was to present an overview of the 301(h) decision document
20 and to listen to comments. So I want to thank everyone
21 that had comments today.

22 CHAIRMAN MINAN: I think this -- Oh, I'm sorry,
23 Dr. Wright.

24 MR. WRIGHT: I wonder if we could get copies of his
25 presentation. The transparencies I thought were very good

1 of Mr. Fleming.

2 CHAIRMAN MINAN: Any other comments? This closes
3 this agenda item, and this closes, also, the period for the
4 submission of written testimony according to the notice.

5 At this point, Ms. Strauss, do you have any
6 comments that you would like to share with the public?

7 MS. STRAUSS: No. Thank you, Chairman Minan.

8 CHAIRMAN MINAN: That concludes this agenda item.

9 (Whereupon, agenda Item 7 was concluded
10 at 11:55 A.M.)

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